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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,

Plaintiff,

vs.

DR. ROBERT CLARK et al.,

Defendants.

Civil No. 1:00-cv-10

U.S. District Judge Ror
Magistrate Judge Smye

FILED
HARRISBURG

FEB 28 2001

MARY E. D'ANDREA, CLERK
Per g/g
DEPUTY CLERK

PLAINTIFF'S WRITTEN OBJECTIONS TO THE U.S.
MAGISTRATE JUDGE'S ORDER OF JANUARY 9, 2001
AND REPORT AND RECOMMENDATION OF FEBRUARY 2, 2001

COMES NOW, the Plaintiff & his Counsel in the above entitled
Civil Action, John Richard Jae, a Layman Unlettered in the Arts & Sciences
of the Law & Legal Procedures within the United States, &
pursuant to Fed. Civ. P. 72 & M.D. LR 72-30
this Court, files his Plaintiff's Written Objections to the
Magistrate Judge's Order of January 9, 2001, and
Report and Recommendation of February 2, 2001, herein & alleges, deposes
states:

That, on or about June 5, 2000, Plaintiff John Richard
Jae, commenced this 42 U.S.C. § 1983 Civil Rights Complaint
Action

filing of a complaint and Application For Leave To Proceed In Forma Pauperis.

On June 21, 2000, this court granted Plaintiff leave to proceed in forma pauperis, herein this case.

On or About August 3, 2000, Plaintiff filed his Amended Complaint, herein this case, adding Martin L. Dragovich, John A. Palakovich, Robert N. Nastney, Michael J. Kazar & John Andrade as Btry Defendants herein.

On or About September 8, 2000, 2000, defendants Dragovich, Palakovich, Nastney, Kazar & Andrade filed a motion to revoke plaintiff's in forma pauperis and to defer filing a responsive pleading to the plaintiff's amended complaint. October 4, 2000, defendant Clark filed a motion to revoke the plaintiff's in forma pauperis status and to defer filing a responsive pleading, herein this case.

By an order dated January 9, 2001, U.S. Magistrate Judge J. Andrew Smyser of this court, granted the Defendants' motions to revoke the plaintiff's in forma pauperis status, vacated the order of June 21, 2000, which had granted the plaintiff's application to proceed in forma pauperis and ordered the plaintiff to pay the full \$150 filing fee within twenty days.

On February 2, 2001, U.S. Magistrate Judge Snyder filed his Report And Recommendation that this action be dismissed because the plaintiff has not paid the \$150.00 Filing Fee as ordered herein.

This is the plaintiff's written objections to the U.S. Magistrate Judge's Report And Recommendation of February 2, 2001, herein.

The U.S. Magistrate Judge states & holds, that

Our decision to revoke the plaintiff's in forma pauperis status was based on the fact that in June of 2000, the plaintiff was evaluated by mental health professionals at the State Correctional Institution at Waymart and found not to be suicidal. Rather, the staff at Waymart believe that the plaintiff was manipulative and that his "suicide attempts" were attempts to manipulate his environment.

Plaintiff specifically objects to the above-statement / holding of the U.S. Magistrate Judge herein, as on October 1 / See the U.S. Magistrate Judge's Report And Recommendation of February 2, 2001, at 7.

2000, the U.S. Magistrate Judge entered an Order, here in this case, that, "Within fifteen days of the date of this Order, Defendants Dragovich, Palakovitch, Navotney, Kaza and Andrade shall file any relevant evidence they wish concerning the issue of imminent danger and a supplemental brief in support of their motion." However, Corrections Defendants Dragovich, Palakovitch, Navotney, Kaza and Andrade violated such Order, herein, as the evidence which they filed herein was "not" relevant to the time of the incident(s) alleged in plaintiff's initial complaint (April 23, ~27, 2000), and which were "not" relevant to the reason(s) why this plaintiff alleges he is under imminent danger of serious physical injury for, in his initial complaint, herein, Paragraph No. 28, and in his Application For Leave to Proceed In Forma Pauperis, at 2, herein, as such Corrections Defendants' evidence/exhibits contain information/evidence which pertains to issues/incidents which occurred either before and/or after the relevant incidents alleged in plaintiff's initial complaint, for which plaintiff claims he was under imminent danger of serious physical injury for, herein this case. Furthermore, in *Gibbs v. Roman*, 116 F.3d 83 (3d Cir. 1997), the U.S. Court of Appeals for the Third Circuit, stated & held:

We emphasize that the proper focus when examining an inmate's complaint

filed pursuant to § 1915(g) must be the imminent danger faced by the ~~imminent~~ at the time of the alleged incident and not at the the time the complaint was filed. (Gibbs, 16 F.3d at 1101)

Therefore, because Corrections Defendants had filed evidence/exhibits which were "not" relevant to the determination of the issue whether or not the plaintiff was under imminent danger of serious physical injury on the dates of the incidents alleged in his initial complaint, here in this case, they "had" violated this Court's order of October 6, 2000, herein, directing them to file any "relevant" evidence they wish concerning issue of imminent danger and they "had" likewise violated Fed. R. Evid. Rules 401 & 402 & thus, it was a legal & reversible error for the U.S. District Judge to even consider Corrections Defendants' irrelevant evidence/exhibits submitted herein, with the exception of the Second & Third Pages of Exhibit A-2, an Appendix to Corrections Defendants' Supplemental Brief In Support of Motion To Replead Plaintiff's In Forma Pauperis Status And To Defer Filing Of Responsive Pleading To Plaintiff's Amended Complaint, & because this Court "did" consider & rely upon such this Court's January 9, 2001, Order and its February 2, 2001, Report And Recommendation, here "was" a clear abuse of discretion as such violated the holding/decision of

Corrections Defendants' exhibits for the most part pertain to evaluation of the plaintiff by SCI-Waymart Psychiatrist & Treatment Team, which occurred from June 6, 2000 - July 18, 2000, over 1 1/2 months after the date of the incidents alleged in plaintiff's initial complaint, for which this plaintiff contends he is under imminent danger of serious physical injury for, & just because the plaintiff was suicidal then, does "not" mean he was not suicidal back on April 23 & 24, 2000.

U.S. Court of Appeals For The Third Circuit In Gibbs v. Roman

Furthermore, In Gibbs v. Roman, 116 F.3d 83 (3d Cir. 1997), the U.S. Court of Appeals For The Third Circuit, stated & held:

In resolving a contested issue of imminent danger, the district court may rely upon evidence supplied by sworn affidavits or depositions, or alternately may hold a hearing. (Gibbs, 116 F.3d at 87).

However, herein this instant case, Corrections Defendants evidence which they had submitted in support of their Motion To Revoke Plaintiff's In Forma Pauperis And To Defile Of Responsive Pleading To Plaintiff's Amended Complaint contained no depositions & no sworn affidavits that such is true & in fact, Corrections Defendants fail to even include therewith, an unsworn declaration that such is true under penalty of perjury & pursuant to 28 U.S.C. § 1746 and thus, the U.S. Magistrate Judge, herein, abused his discretion & violated the controlling law as set forth in Gibbs, above, when he considered & relied upon such Corrections Defendants' unsworn evidence to revoke Plaintiff's In Forma Pauperis status, herein, & such "was" "is" even more of an egregious & illegal reversible error since this Plaintiff had challenged the authenticity of such evidence & the credibility/qualifications of those who developed/made such evidence herein.

Furthermore, Plaintiff avers & submits that on January 10, 2001, he tried to commit suicide by attempting to hang himself from his cell vent & by cutting his arm & as a direct result of such suicide attempt, the plaintiff on January 18, 2001 was transferred to the Mental Health Unit at SCI-Pittsburgh & during the course of his treatment & evaluation there, Dr. Kern (Plaintiff's treating Psychiatrist in the MHU at SCI-Pittsburgh) stated to this Plaintiff that he interprets SCI-Wayman SAU's evaluation/report & the results of the psychological testing done there during last June & July, 2000, as totally different than the SCI-Wayman SAU Psychiatrist/SAU treatment Team did, in that, Dr. Kern believes & states that Plaintiff had a head injury/neurological damage to the right frontal lobe of his brain, which causes the plaintiff's acting out behavior; that plaintiff's misconduct behavior was caused/influenced by plaintiff's mental health illness/disease, that this plaintiff indeed is a mental health case & that plaintiff's attempts to commit suicide were real & a criterion. In fact, in a teleconference held on February 12, 2001, between Dr. Kern & Dr. Judy Gettle (MHU Director) & Staff 3/ This Report/Evaluation/Tests referred to herein are the ones which the Corrections Defendants submitted in this case which are the same ones which the U.S. Magistrate relied upon to R Plaintiff's IFF Status herein.

dawn at SCI-Greene, Dr Kern & Dr Gottle recommend that all of this plaintiff's DC Status Time be for mental health reasons, that plaintiff be removed & taken out of the Special Management Unit (SMU) at SCI-Greene & that he be placed in a therapeutic environment, such as a Prison Special Needs Unit & given Dr Kern's evaluation/findings, which square conflicts with that of the SCI-Waymart SAU's Psychiatrists/treatment teams, which Correction Defendants have submitted herein as their track & sworn to evidence, the U.S. Magistrate Judge decision to revoke plaintiff's in forma pauperis herein this case, "is" contrary to the law & he has abused his discretion by making such determination.

The U.S. Magistrate Judge also states & holds:

"It remains our conclusion that the plaintiff's claim that he was in imminent danger of serious physical danger is not credible." 4/

Plaintiff specifically objects to such statement/hold of the U.S. Magistrate Judge, as above, & based upon what this plaintiff states & argues, herein, a bare & sup, as well 4/see U.S. Magistrate Judge's Report And Recommendation of February 2000, at 8.

all of the facts, arguments & citations of Authority as set forth therein, Plaintiff's Brief in Opposition to Defendants' Motion to Revoke Plaintiff's In Rem Raper's Status And to Defend Filing of Response to Plaintiff's Amended Complaint and Affidavit in Support, all of which this Plaintiff now incorporates herein by reference hereto and avers & argues, that such statement is contrary to the controlling Federal law & that Magistrate Judge abused his discretion in so doing, herein this case.

Finally, the U.S. Magistrate Judge, stated

In *Gibbs v. Roman*, 116 F.3d 83 (3d Cir. 1997), the United States Court of Appeals for the Third Circuit held that "imminent danger" measured at the time of the alleged incident, not at the time the complaint is filed. In *Abdul-Akbar v. McKelvie*, No. 98-7303, Slip Op. at 8-9 (3d Cir. Jan. 29, 2001), the United States Court of Appeals for the Third Circuit abandoned the interpretation set forth in *Gibbs* and held that "imminent danger" relates to the time when the prisoner brings the action. We find that there is ample evidence that at the time Plaintiff was under

imminent danger either at the time of the incidents alleged in the complaint or at the time he commenced this action. 5/

Plaintiff specifically objects to the above-stated holding of the U.S. Magistrate Judge, because given facts that the Complaint & Amended Complaint filed herein this case on or about June 5, 2000 & August 3, 2000, respectively, that the plaintiff was granted leave to proceed in forma pauperis herein June 21, 2000 & that Corrections Defendants' Motion to Revoke Plaintiff's In Forma Pauperis Status and to Defer Filing of Responsive Pleading to Plaintiff's Amended Complaint filed herein on or about September 8, 2000 & Defendants' Motion to Revoke Plaintiff's In Forma Pauperis Status and to Defer Filing of Responsive Pleading was filed herein on or about October 4, 2000, & thus, the standard of review governing Defendants' Motions to Revoke Plaintiff's In Forma Pauperis Status was that under Gibbs v. Roman, 116 F.3d 1083 (3d Cir. 1997), the case law in effect at such time. Abdul-Akbar v. McKelvie, No. 98-7303, Slip Op. at 8 (3d Cir. Jan. 29, 2001), cannot be applied nor used herein this and furthermore, based upon the facts, arguments & authorities therein this Plaintiff's Reply Brief to the Corrections Defendants' Motion to Revoke Plaintiff's In Forma

5/ See U.S. Magistrate Judge's Report and Recommendation of February 2, 2001, at 8-

Pauper's Status And To Defer Filing Of Responsive Pleading To Plaintiff's Amended Complaint and Affidavit In Support, both of which are now hereby incorporated herein by reference hereunto the same, & upon the Plaintiff's Initial Complaint and his Application For Leave To Proceed In Forma Pauperis, herein, the plaintiff was under imminent danger of serious physical injury at the time of the incidents giving rise to Plaintiff's Complaint, herein, and Plaintiff's allegations of imminent danger of serious physical injury are credible. The U.S. Magistrate Judge's determination/holding that such is not credible "is" erroneous & contrary to controlling & other federal law.

Plaintiff also specifically objects to the U.S. Magistrate Judge's February 2, 2001, Report And Recommendation, in its entirety, and avers & submits such "is" contrary to the controlling & other federal law. Plaintiff's Brief In Opposition To Corrections Defendant's Rendee Plaintiff's In Forma Pauper's Status And To Defer Responsive Pleading To Plaintiff's Amended Complaint, Affidavit In Support, & Plaintiff's Initial Complaint & Application To Proceed In Forma Pauperis, all of which are now hereby incorporated by reference hereunto the same, and the Plaintiff's affidavits, herein.

(U)HEREFORE, the U.S. District Judge is requested not to adopt the Report And Recommendation of the U.S. Magistrate Judge of February 2, 2001, and to dismiss this Civil Rights Action, but to overrule and vacate the January 9, 2001, order of the U.S. Magistrate Judge Revoking Plaintiff's In Forma Pauperis Status and granting Defendants' Motions to Revoke Plaintiff's In Forma Pauperis Status, & deny such motions & order corrections Defendants to file a responsive pleading to Plaintiff's Amended Complaint within twenty (20) days thereafter the receipt of such order, herein this case =

RESPECTFULLY SUBMITTED

(S) John Richard Jae

MR. JOHN RICHARD JAE,

#BQ-3219

SCT-PITTSBURGH

P.O. Box 99901

PITTSBURGH, PA. 15233-0901

Dated: 15th FEBRUARY 2001

Plaintiff and Pro Se Counsel

Joe V. Kyler et al.
 CIV No. 1:00-cv-01090
CERTIFICATE OF SERVICE

I certify that on 2/16/01, I mailed to the person listed below, a true & correct copy of each of the Plaintiff's Second Motion For Enlargement Of Time, Motion Order Requiring Defendants To Permit The Plaintiff To Communicate With And Write Inmate At SCT-Camp Hill Prison ^{and Brief In Support} and Motion For Order Requiring Prison Chaplain R. Vogel And Officer Charlie Craig To Sign Affidavits. The Plaintiff Herein And Brief In Support ~~and Motion For Sanctions Inter Alia Motion To Hold Defendants In Contempt And Brief In Support~~ by way of U.S. 1st Class Mail, postage are paid =

I certify that on 2/16/01, I gave the Originals of each of the above-same documents to prison officials here mailing to this Court.

I Certify under the penalty of perjury and pursuant to 28 U.S.C. § 1746 that the above is true & correct:

MR. Michael L. Harvey
 Senior Deputy Attorney General
 Office of The Attorney General of Pennsylvania
 15th Floor, Strawberry Square
 Harrisburg, PA. 17120

Dated/Executed on:

16th February 2001:

At: Pittsburgh, Pennsylvania

(S) John Richard Jr

MR. JOHN RICHARD JR

Plaintiff and his Co-counsel

From The Desk Of:
MR. John Richard Jare,
#BQ-3319
SCI-Pittsburgh
P.O. Box 9990,
Pittsburgh, PA. 15233-0901

February 16, 2001

To: The Office of the Clerk,
United States District Court
228 Walnut Street
P.O. Box 983
Harrisburg, PA. 17108-0983

Re: Jare vs. Kyle, et al.,
Civil No. 1:00-CV-00085

Dear Clerk:

Please file the enclosed originals of Plaintiff's
Second Motion For Enlargement Of Time, Motion For Order Requiring
Defendants To Permit The Plaintiff To Communicate With
And Write Inmate At SCI-Camp Hill Prison And Brief In Support
and Motion For Order Requiring Prison Chaplain Rev. Vogel And
Officer Charlie Craig To Sign Affidavit For The Plaintiff
Herein And Brief In Support ^{and Motion For Sanctions} herein the above-entitled
Civil Rights Action:

Sincerely,

cc: MR. Michael L. Hines (s)
w/encs.

~~John Richard Jare~~
MR. JOHN RICHARD JARE,
Plaintiff and As Se Counsel